

## CHAPTER 12

# EDUCATION, HIGHER EDUCATION, TRANSPORTATION, AND NON-EXECUTIVE AGENCIES

## 12.1 INTRODUCTION

Several departments and agencies have budget procedures that differ from those of traditional Executive Branch departments. These include elected officials and separate branches of government. The purpose of this chapter is to delineate budget processes that either complement or differ from the Office of State Planning and Budgeting (OSPB) standard process. In addition, this chapter provides additional guidance, outlines additional deliverable dates and clarifies procedures for any variance from the standard OSPB budget instructions.

## 12.2 EXECUTIVE BRANCH AGENCIES

The Colorado State Board of Education, the Colorado Commission on Higher Education, and the Colorado Transportation Commission are part of the Executive Branch and adhere to the OSPB process. While their budgets are subject to Governor's review and approval, the nature of these bodies create several issues different from the typical budget process.

### Department of Education

The Colorado Department of Education is the administrative arm of the Colorado State Board of Education. It serves as the state level coordinator for Colorado's 178 school districts and the Charter School Institute. The Commissioner of Education prepares the budget, once representing the Colorado State Board's funding priorities, and then it is amended to represent the Executive Branch's Funding priorities. The Executive budget is compiled in accordance with the OSPB instructions. The State Board of Education approves the budget before (or concurrent with) the Department of Education's Executive budget submission to the OSPB.

The primary component of the Department's budget is public school finance. The funding process for public school finance differs from traditional departmental requests, principally because the School Finance Act of 1994, as amended, along with Section 17 of Article X of the State Constitution, requires the Department to request annual funding based on a formula. Specifically, the School Finance Act contains a formula that calculates a per pupil funding amount for each school district based on the individual characteristics of the district, such as the district's cost of living, the number of students enrolled, and an 'at-risk' factor. Local property taxes and specific ownership taxes are the first line of funding for a school district. If local sources are insufficient to fully fund the program, state moneys are then used to fund any shortfall.

The Department of Education's Long Bill groups include: Management and Administration, Assistance to Public Schools (which includes funding for "categorical programs" such as

transportation and special education), Library Programs, and the School for the Deaf and the Blind.

The Department's budget request process is slightly different from other agencies. The Governor's Office expects the Department to submit a budget in the same fashion as other agencies with a few minor differences. The exceptions anticipated for the budget cycle calendar are listed below:

- A. Military Dependant Supplemental Aid - House Bill 07-1232 (Section 22-54-128, C.R.S.) added the "military dependent supplemental pupil enrollment aid" language to the Public School Finance Act. This Supplemental is intended to capture students who enroll in a district after October 1 and before February 1 of the school year. The statute details deadlines for information, requiring the Department to submit a supplemental funding request to the General Assembly on or before March 1 each year through 2011. Due to budget constraints, funding for this program/supplemental was eliminated for both FY 2008-09 and FY 2009-10. This program is repealed July 1, 2011. Per statute, districts may apply for supplemental funding to account for additional military pupil enrollment. The Department shall then submit a request to fully fund the need, however, this funding is subject to available appropriations and the likelihood that supplemental funding is available for FY 2009-10 is unknown at this time. The Department will need to provide an updated request for any need by February 27, 2010 after discussion with OSPB.
- B. The Department is required to submit the annual Total Program funding request on August 1, 2009 for the November 1 budget submission to the Joint Budget Committee (actual dates may differ if they fall on holidays or weekends). After the November 1 budget submission, revised projections by Legislative Council staff regarding local property tax revenues and student enrollment numbers which are published in December may change the Total Program funding need. Consistent with Section 24-37-304 (1) (b.5) and (c), C.R.S., the Department is required to submit a Supplemental Request and an amended request for the following fiscal year (budget amendment) for Total Program funding to the Joint Budget Committee by January 1 (including fund source adjustments). In addition Section 22-54-106 (4) (b), C.R.S., requires the Department to annually submit a supplemental request to "fully fund" the state's share of Total Program. Due to the timing of the data collections required to calculate this amount as required by the School Finance Act of 1994, as amended, (i.e., the October pupil count and the property tax cycle), the Department generally needs to update the supplemental request after the January 1 submittal (as allowed by Section 24-37-304 (1) (b.5), C.R.S.). The Department is only expected to prepare the narrative portion of the supplemental request once; the subsequent update only needs to include an updated chart that identifies the relevant new data.

For the FY 2010-11 budget cycle, the Department must provide the updated amount of Total Program need for FY 2009-10 to OSPB by January 10, 2010, and the OSPB will submit a revised supplemental request for Total Program to the Joint Budget Committee (if necessary) by January 15. However, due to the unique deadlines and timing included in SB 09-256 which stipulates that funds "shall" be released to school districts by January

29, 2010 if no negative supplemental is enacted by this date, the Department must provide the updated amount for Total Program need for FY 2009-10 to OSPB by December 28, 2009 and the OSPB will submit a revised supplemental request for Total program to the JBC on or around January 4, 2010.

The majority of the exceptions for the Department relate to district pupil count variances and revenue projections.

## **Department of Higher Education**

The Department of Higher Education consists of academic, nonacademic, and auxiliary agencies. Academic agencies include the ten institutional governing boards which oversee 27 public post-secondary institutions along with the Auraria Higher Education Center (the 27 public post-secondary institutions include the Area Vocational Schools, Local District Junior Colleges). Of these 27 institutions, there are twelve four-year public institutions and fifteen two-year public institutions. Nonacademic agencies include the Department Administrative Office, the Colorado Commission on Higher Education (CCHE), the Division of Occupational Education and the State Historical Society. Other important components of the Department of Higher Education that are not part of the State's annual budget process include CollegeInvest, which administers the State of Colorado's 529 savings program and CollegeAssist, which administers the federal guarantee on loans that originate through the Family Federal Education Loan Program (FFELP). All governing boards are enterprises and can lose enterprise status if they receive over 10% of their revenues from the State.

All non-academic Higher Education agencies must follow the OSPB instructions and budget guidelines. For FY 2010-11, the Department of Higher Education will submit a November 1 Budget Request that includes Reconciliation (see chapter 5), Line Item Description (see chapter 5), and "Schedules" prepared for all of the respective divisions (including the academic, non-academic and auxiliary divisions) as promulgated in the OSPB Budget Instructions with the exception of the "Schedule 3" and "Schedule 8" (which will continue to be limited to the non-academic divisions of the Department's budget). The due dates for the submission(s) are on the OSPB Budget Calendar.

For the August 1 Change Request submission deadline to OSPB, the Department is expected to follow the OSPB Budget Instructions. To the extent that the Department cannot complete particular components of the annual August 1 Change Request submission (i.e. tuition, funding model, and stipend/fee-for-service split), the Department is instructed to seek documented approval from OSPB for any extensions sought through this submission process. Any request from the Department for extensions on the August 1 deadline for Change Requests should include a description of the extenuating circumstance causing the delay and the projected delivery date of the respective decision items for OSPB review. Requests for extensions from the August 1 deadline must be received by OSPB by July 15, 2009 for the FY 2010-11 budget cycle.

The Department is expected to submit Supplemental Requests and/or Budget Amendments to OSPB on the published deadlines. To the extent that the timing of the spring enrollment forecast (historically completed on February 15) necessitates late supplemental requests and late stand

alone budget amendments from the Department, they are due to OSPB on February 18, 2010 in order for OSPB review and Governor approval prior to submission to the JBC by February 26 (or as close to that date as possible, as discussed with OSPB and the Joint Budget Committee staff). The Department is also instructed to provide JBC staff with raw data for spring census as soon as data submission from governing boards is closed, on or around February 18. This data will be provided in advance of the formal budget request to be submitted by February 26. OSPB will only consider late requests from the Department that are driven from the spring enrollment census limited to those identified here (except where allowed for other reasons described elsewhere in these instructions):

- College Opportunity Fund fee-for-service and student stipend true-up;
- Tuition spending authority true-up;
- Special purpose financial aid - Native American Students/Fort Lewis College tuition true-up; and
- Special purpose financial aid - Veterans'/Law Enforcement/POW Tuition Assistance true-up.

All academic agencies follow the budget instructions issued by the Department. The Department is instructed to provide the JBC and OSPB the budget data books for governing boards (prepared pursuant to Department instruction) on November 1, 2009. The Department in conjunction with the Commission approves and submits the system-wide budget request for higher education to the Joint Budget Committee and the Office of State Planning and Budgeting. However, OSPB requests that the Department and Commission continue to submit all budget requests to the Office of State Planning and Budgeting for approval prior to submission to the Joint Budget Committee. Like the Department of Education, the Department of Higher Education's budget request differs from traditional executive department requests. The Governor's Office nonetheless expects the Department to submit a budget in the same fashion as other agencies pursuant to 24-37-301, C.R.S. OSPB expects the Department to schedule Commission action items such that they can be acted upon prior to submission to OSPB for review and Governor's approval prior to submission to the JBC.

## **Department of Transportation**

Although the entire budget for the Department of Transportation is reflected in the Long Bill, the largest portion of the budget – Construction, Maintenance, and Operations – is separately adopted annually by the Colorado Transportation Commission and either approved or disapproved in its entirety by the Governor.

The development of the Commission's budget follows a separate calendar from the legislatively appropriated programs within the Department. Annually, prior to December 15, the Commission adopts a proposed budget and submits it to the Governor, the OSPB, the Joint Budget Committee, the Senate Transportation Committee, and the House Transportation and Energy Committee. The procedural requirements, deadlines, and content of the budget are detailed in Section 43-1-113, C.R.S. The Department will normally submit the proposed budget to OSPB prior to December 15 to allow for its review.

In January, the Senate Transportation Committee and the House Transportation and Energy Committee hold a joint meeting to review and comment on the proposed budget. By March 15, the Joint Transportation Committee and the Joint Budget Committee transmit their comments on the budget to the Transportation Commission. On the third Thursday in April, the Colorado Transportation Commission considers these comments and adopts a final budget that complies with the total revenues and expenditures set forth by the General Assembly. It submits this budget to the OSPB by April 30. The Governor must approve the budget by no later than 30 June to permit the department to authorize expenditures in the new fiscal year. Once approved by the Governor, this becomes the final budget and the Department can begin obligating funds for the coming fiscal year.

Funding for the Department consists primarily of the constitutionally dedicated Highway Users' Tax Fund (HUTF) and federal highway/transportation funds. Senate Bill 09-228, requires transfers of General Fund to transportation of 2% of gross general fund revenues for FY 2012-13 through FY 2016-17. These transfers are contingent upon personal income growth of at least five percent and during the five year investment plan revenues certain triggers based on rates of personal income growth within the state and the magnitude of TABOR refunds. The General Fund transfers authorized under this statute are restricted to use supporting Department's strategic investment programs.

In addition, in 1999, the General Assembly enacted House Bill 99-1325 that allowed the issuance of Transportation Revenue Anticipation Notes (TRANs) subject to voter approval. Proceeds from the TRANs were used to finance qualified federal aid highway projects in Colorado, collectively known as the "7th Pot Strategic Projects." The TRANs do not represent "new money" but rather are funds that are paid back from future federal and state match revenues with annual payments through 2017. TRANs funds and the debt service are subject to appropriation by the Transportation Commission.

Additionally, the Transportation Commission must annually submit a capital construction request for state highway reconstruction, repair, or maintenance projects to the Capital Development Committee on or before October 1. Such request shall be made in accordance with Sections 43-1-113(2.5) and 2-3-1304(1)(a.5), C.R.S.

As indicated earlier, a portion of the Department's budget is appropriated in the Long Bill and follows the same budget process that used by other Executive departments. These Long Bill groups include Administration, the First Time Drunk Driving Offenders Account, and, in years when appropriated to the department, Limited Gaming Funds. The Governor's Office expects the Department to submit a budget for these programs in accordance with the OSPB instructions and budget guidelines. In recent years the Department has been requested to provide completed state budget forms for each of the offices within the Administration Long Bill group for the purposes of completing personal services calculations. Due to the informative nature of these documents, OSPB is requesting that the Department include these forms as part of its formal budget submission. The Construction, Maintenance, and Operations, High Performance Transportation Enterprise, and Statewide Bridge Enterprise groups are separate lines noted in the Long Bill solely for informational purposes.

Because CDOT does not receive a direct General Fund appropriation in the Long Bill, OSPB requires the department to submit all schedules only for the appropriated Administration, First Time Drunk Driving Offenders Account, and, when appropriate, Limited Gaming portions of the Long Bill. For the Construction, Maintenance, and Operations, High Performance Transportation Enterprise, and Statewide Bridge Enterprise, the Department need only submit a summary Schedule 2.

## **12.3 ELECTED OFFICIALS**

The Colorado Attorney General (the Department of Law), the State Treasurer, and the Secretary of State typically choose to follow the OSPB budget process. Generally, this includes use of common OSPB forms and formats where applicable and similar submission deadlines to the JBC. However, because these are elected offices, their budget requests are not subject to the OSPB review and approval process.

### **Department of Law**

The Department of Law provides legal services to State departments and agencies and covers a variety of other statutory responsibilities including the following: defending the State's felony criminal convictions against appeal; enforcing the Uniform Consumer Credit Code, Antitrust, and Consumer Protection laws; investigating and prosecuting securities, insurance, Worker's Compensation, and Medicaid fraud; and assisting local government capital crime efforts.

For a department or agency to permanently or significantly increase legal services hours in excess of the hours currently appropriated, a Change Request must be completed by the affected department and submitted to OSPB, according to the published timelines. Departments or agencies requesting an increase in legal services hours should contact their Department of Law attorney and Budget Director to discuss the appropriate increase. Common Policies as discussed in Chapter 8 should be used where applicable. When OSPB approves the request, the department or agency should alert the Department of Law Budget Director so that a corresponding Department of Law Schedule 13 can be submitted for both spending and FTE authority. The Department of Law submits its budget request to the Joint Budget Committee and provides an informational copy to the OSPB.

However, House Bill 08-1321 (25-75-112,(m),(II), C.R.S. 2008) allows personal services appropriations to be used for expenditures related to the provision of legal services by either the Department of Law or a private attorney if the Joint Budget Committee is informed. Although this should not be considered a permanent solution, if a department requires an temporary increase in legal services, it may access funds from other personal services lines. To do so, the department must request authorization first from OSPB and receive OSPB approval of a letter to the Joint Budget Committee. The letter must be approved and sent before the funds are used from the personal services line.

OSPB typically assumes a 6% increase for the department, including Common Policies, when estimating the base budget increase for the November 1 Budget Request, if a 6% increase is allowed by recent revenue projections.

## **Treasury Department**

The State Treasurer is responsible for managing State of Colorado investments and for monitoring and improving cash management practices of the State. The Department is appropriated General Fund primarily to support the Fire and Police Pensions Association (30.4% of Treasury General Fund in FY 2007-08). The remainder of the General Fund appropriation to the Treasury Department is designated for Administration and the Senior Citizen and Disabled Veteran Property Tax Exemption.

The Department also administers the Highway Users' Tax Fund. Pursuant to Sections 43-4-206 to 208, C.R.S., after funding the "off-the-top" money for Colorado State Patrol, Ports of Entry, and the Motor Vehicles Division, the Treasury Department splits the balance of the fund into appropriations for the State, counties, and municipalities.

The Department submits its budget, including both General Fund requests and Highway Users' Tax Fund apportionment, directly to the Joint Budget Committee and provides an informational copy to the OSPB.

OSPB typically assumes a 6% increase for the department, including Common Policies, when estimating the base budget increase for the November 1 Budget Request, if a 6% increase is allowed by recent revenue projections.

## **Secretary of State**

The Office of the Secretary of State (Department of State) serves as a depository for a variety of public records. The Office receives statutorily required filings from nonprofit and for-profit entities such as corporations, partnerships, and limited liability companies, and it receives lien filings pursuant to the Uniform Commercial Code. It is responsible for the publication of administrative rules filed in the Office by state agencies and for licensing and regulatory oversight in connection with notaries public, professional lobbyists, and charitable gaming under the bingo-raffle law, implementing and managing the Address Confidentiality Program that keeps the addresses of victims of domestic violence, sexual offense or stalking confidential. The Office supervises the conduct of state elections and administers the citizen initiative petition process.

The Office of the Secretary of State is primarily cash funded however; the agency has received federal funds for the Help America Vote Act. The cash funds support administration, special purposes, Disaster Recovery, and the reimbursement of county clerk and recorders for a portion of the costs of conducting elections. The Department formulates the budget and, with the Secretary of State's approval, submits it directly to the Joint Budget Committee and provides the OSPB with an informational copy. The Federal Funds are used to carry out the requirements of the Help America Vote Act.

OSPB typically assumes a 6% increase for the department, including Common Policies, when estimating the base budget increase for the November 1 Budget Request, if a 6% increase is allowed by recent revenue projections.

## **12.4 SEPARATE BRANCHES**

The Judicial Branch includes the Supreme Court, the Court of Appeals, Courts Administration, Trial Courts, Probation and Related Services, the Public Defender, the Alternate Defense Counsel, and the Office of the Child's Representative. Each independent agency has its own budget office and personnel system. The Judicial Branch budget request typically parallels the format in the OSPB instructions, but is not subject to review or approval by the OSPB. OSPB typically assumes a 6% increase for the agency, including Common Policies, when estimating the base budget increase for the November 1 Budget Request, as long as 6% increase is allowed by recent revenue projections.

The Legislative Branch is comprised of the General Assembly (including the members and aides of the House, Senate, Joint Chambers, and Legislative Information Services) and four legislative service agencies: the State Auditor's Office, the Joint Budget Committee staff, the Legislative Council staff, and the Office of Legislative Legal Services. Budget requests from the legislative service agencies are reviewed and approved by the Executive Committee of the General Assembly and consists predominately of General Fund. Typically, the budget request for the Legislative Branch is presented to the Executive Committee in late December, early January. OSPB typically assumes a 6% increase for the agency, plus Common Policies, when estimating the base budget increase for the November 1 Budget Request, if a 6% increase can be allowed by recent revenue projections.

The request largely reflects Personal Services, Operating Expenses, Travel Expenditures, and most common policies such as POTS funding. Only a few budgeted amounts are included in the Long Bill for this branch of State government; the rest is run within special legislation (for FY 2009-10, this is SB 09-224).